IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Writ Petition No. 1432 (M/S) of 2006

1. Smt. Sunita Rani W/o Sri Mukesh Kumar.
2. Mukesh Kumar S/o Sri Sitara Lal,
   Both R/o House No. 651/ 12-B, Ganga
   Enclave Colony Roorkee, Tehsil Roorkee,
   District- Haridwar. .....Petitioner.

Vs.

1. Kusum Lata W/o Late Sri RamKumar.
   R/o House No.273/1,
   Civil Lines Uttari Muzaffarnagar,
   District Muzaffarnagar (U.P.)
2. Jameel Ahmad S/o Mr. Rao Asgar,
   R/o Village paniyala Chandapur,
   Tehsil Roorkee, District- Haridwar.
3. District Judge, (J.D) District Haridwar .....Respondents

Sri Sharad Sharma learned counsel for the petitioners.
Sri Lok Pal Singh learned counsel for the respondent No.1.
Sri Nand Prasad learned standing counsel for the respondent No.3.

Dated: 22nd September 2006

Hon'ble B.S. Verma, J.

Heard Sri Sharad Sharma learned counsel for the petitioners, Sri Lok Pal Singh learned counsel for the respondent No.1 and Sri Nand Prasad learned standing counsel for the respondent No.3.

2. The present writ petition has been filed by the petitioners for quashing the impugned judgment/order dated 25-8-2006 passed by District judge, District Haridwar Respondent No.3 (Annexure 5 to the writ petition) where by the revisional court allowed the revision exparte.

3. Brief facts of the case are that the respondent No. 1 plaintiff filed the suit for permanent injunction on the basis of registered sale deed on 25.10.2005. The application for temporary injunction paper No. 6 (C) (2) was also filed by the plaintiff before the trial court. The learned Civil Judge (S.D) Roorkee after hearing both the partied did not grant exparte injunction as the opposite party had appeared before the

court below and both the parties sought adjournment and prayed for early hearing. Therefore, The learned Civil Judge (S.D.) Roorkee fixed the date for objection and disposal of the application moved by the plaintiff under Order 39 Rule 1 and 2 of C.P.C. for temporary injunction.

4. It reveals from the facts of the case that the learned Civil Judge did not pass any interim order in favour of the plaintiff or defendants- petitioners. However, the respondent- Kusum Lata had preferred a revision under Section 115 of C.P.C. before the District Judge Haridwar although the revision was not maintainable in view of the amended proviso 115 of C.P.C. The order passed by learned District Judge is without jurisdiction and cannot be sustained in the eye of law. The respondent Nos. 2 and 3 are the formal respondents and only dispute is in between the petitioner and respondent No.1.

5. Accordingly, the writ petition is allowed and the order dated 25.8.2006 passed by the District Judge (S.D.) Roorkee is hereby set aside. However, the learned Civil Judge (S.D.) is directed the application of the plaintiff which is pending for disposal under order 39 Rule 1 and 2 on merit expeditiously preferably within a period of two weeks from the date of production of the certified copy of the order The objection which has already been filed by the petitioner before the trial court shall be taken into consideration before deciding the application by the District Judge.

6. The writ petition is allowed. No order as to cost.

(B.S. Verma,J)

Dated: 22nd September 2006
M.K.